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HUMAN RIGHTS COMMITTEE

Forty-eighth session

SUMMARY RECORD OF THE 1237th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 13 July 1993, at 3 p.m.

Chairman: Mr. ANDO

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GE.93-17330 (E)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Draft general comment on article 18 of the Covenant (CCPR/C/48/CRP.2) (continued)

1. The CHAIRMAN recalled that at its previous meeting the Committee had provisionally adopted an amended version of paragraph 9 of the draft general comment. Paragraph 10 had given rise to some discussion, as a result of which Mr. Dimitrijevic had been requested to draft a revised version of the paragraph taking into account the concerns expressed by members.

Paragraph 10

2. Mr. DIMITRIJEVIC said that, for the sake of consistency with the amended version of paragraph 9, he proposed that paragraph 10 should read:

> "If a set of beliefs is treated as official ideology in the constitutions, statutes, proclamations of the ruling parties, etc., it shall not result in any impairment of the freedom of religion or belief or any rights recognized under the Covenant nor in discrimination against persons who do not accept the official ideology or oppose it."

3. Reacting to a request by Mr. Wennergren for the inclusion of a reference to the other freedoms listed under article 18, Mr. DIMITRIJEVIC said that if paragraph 10 was expanded to cover all the freedoms listed under article 18, paragraph 9 would have to be amended accordingly.

4. Mr. WENNERGREN pointed out that paragraph 9 dealt exclusively with official religion, whereas paragraph 10 covered the much broader concept of official ideologies. There was thus no reason for the Committee to feel in any way restricted by the contents of paragraph 9.

5. Mr. DIMITRIJEVIC, agreeing with the previous speaker, suggested that "the freedom of religion or belief" should be replaced by "the freedoms under article 18".

6. Mr. NDIAYE, after endorsing that suggestion, said that mention should also be made of the fact that in practice ruling parties often treated a set of beliefs as official ideology, even though there might not be any formal endorsement of those beliefs.

7. Mr. DIMITRIJEVIC said that, in order to meet the previous speaker's concerns, the first sentence might be amended to read: "If a set of beliefs is treated as official ideology in the constitutions, statutes, proclamations of the ruling parties etc., or in actual practice, ...".

8. The CHAIRMAN said he took it that the Committee could provisionally agree to the revised version of paragraph 10, as further amended during the discussion.

9. It was so decided.

Paragraph 11

10. Mr. DIMITRIJEVIC said the latter part of paragraph 11 was based on the Committee's jurisprudence, highlighting the fact that any differentiation among conscientious objectors was unacceptable. In that connection, he drew the Committee's attention to the third sentence, which had been carefully drafted by the Working Group to make it quite clear that the Covenant did not refer explicitly to conscientious objection as a right, although the phenomenon was mentioned under article 8. In the original draft the sentence had merely mentioned the Working Group's awareness of the phenomenon without making any specific reference to it as a right, but in view of the fact that general comments tended to be seen as authoritative pronouncements, a more explicit formulation had been deemed appropriate.

11. Lastly, on behalf of Mr. Francis, who was unable to attend the current meeting, he suggested that the first sentence of paragraph 11 should be reworded to read: "The Committee is aware that many individuals have claimed the right to refuse military service (conscientious objection) on the basis that such a right derives from their freedoms under article 18".

12. Mr. SADI questioned the need for such a lengthy introduction to paragraph 11, pointing out that it was not customary to explain the historical background to articles in the Covenant. He therefore proposed that the first two sentences should be deleted and that the third sentence should be amended to read: "Whereas the Covenant does not refer to conscientious objection as a right to justify the refusal to perform military service, the Committee believes that this right can be had on the basis of article 18, inasmuch as the obligation ...". While he could agree to the rest of the sentence as it stood, he would prefer to refer to "firearms" rather than to "lethal force".

13. Mr. EL SHAFEI, disagreeing with the previous speaker, said that the introduction was vital in order to explain the content of the third sentence, particularly since conscientious objection was not recognized as a right under the Covenant but was merely referred to in article 8.

14. Regarding the penultimate sentence of the paragraph, he failed to understand the need for the qualifying phrase "because they have failed to perform military service" and proposed its deletion.

15. Mr. AGUILAR URBINA endorsed the previous speaker's remarks regarding the importance of the introduction to paragraph 11. As for Mr. Sadi's suggestion to replace "lethal force" by "firearms", he recalled that the matter had been discussed at length by the Working Group, which had finally opted for the former term since it was not the use of arms that the persons in question objected to but rather any act of aggression that might lead to homicide.

16. Mrs. EVATT, while agreeing to the proposed deletion of the first sentence, stressed the importance of retaining the second sentence, which indicated that some States had already exempted citizens from military service.

17. With regard to the third sentence, she took the view that a person should be entitled to claim exemption from any obligations which conflicted with

freedom of conscience and religion. However, clearly some principle such as that referred to by Mr. Aguilar Urbina must be established in order to justify exemption under article 18.

18. Moreover, if paragraph 11 referred to conscientious objection as a right, then, by way of justification, it should also state that the obligation to use lethal force might result in actual violations of the right to life or the right to liberty or security of other persons. In her view, therefore, the Committee had two options: either to include some justification for exemption under article 18 or to delete the whole third sentence.

19. Mr. HERNDL said that the introduction to paragraph 11 was essential, since it not only explained conscientious objection as well as the relevant provisions of article 18 but also indicated that there was a growing trend to recognize conscientious objection as a right. He endorsed the rewording of the first sentence proposed by Mr. Francis.

20. However, there were a number of other improvements that could be made. For instance, in the second sentence, he suggested the deletion of the words "the carrying or use of weapons", since the phrase "performance of military service" covered the point. As to the concerns expressed by previous speakers regarding the words "lethal force" in the third sentence, he expressed a preference for the wording "the obligation to serve in armed forces and consequently to be under the obligation to use arms", for even killing in self-defence involved the use of lethal force, which was not what was intended in that sentence.

21. Mr. SADI, referring to the penultimate sentence, said that although he had originally proposed the word "differentiation", he now considered the term "discrimination" more appropriate. He further suggested that the sentence should be split into two parts. The latter should begin: "likewise there shall be no discrimination against conscientious objectors ...".

22. Mr. NDIAYE endorsed the proposed deletion of the first sentence, suggesting that the second sentence should be modified slightly as a result to begin with the words: "A growing number of States ...". In the third sentence, he suggested that the phrase "the obligation to use lethal force" should be replaced by "the bearing or use of weapons or performance of military service". Those suggested amendments should meet the concerns expressed by previous speakers and render the text less clumsy, while retaining its most important concepts.

23. Mr. WENNERGREN said that the central issue raised by paragraph 11 was the right to life. The refusal to carry weapons was an expression by conscientious objectors of their opposition to killing their fellow men on any grounds. Since article 6 of the Covenant dealt with the deprivation of life, he suggested that in the third sentence the words "the obligation to use lethal force" should be replaced by an appropriate phrase based on that article along the lines of "the obligation to deprive other persons of their lives".

24. With regard to the last sentence, in which the Committee would invite States parties to report on the conditions under which citizens could be

exempted from military service, he suggested, for the sake of clarity, the inclusion of the phrase "in respect of tne freedoms under article 18", since exemption from military service could also be granted on grounds of poor health and physical disability.

25. He also drew attention to another kind of conscientious objection, namely that of State employees who were unwilling to perform duties which conflicted with their personal beliefs, such as doctors called upon to carry out abortions in State hospitals, and suggested the insertion of an additional sentence to cover that point. He stresed the value of information on that question, which would enable the Committee to assess the extent to which the right to freedom of conscience was respected in different countries. The material should of course, be used for information purposes only and would entail no obligation on the part of the reporting country to its citizens from the duties in question.

26. Mr. AGUILAR URBINA endorsed the previous speaker's suggestion for the inclusion in the third sentence of wording taken from article 6 of the Covenant. As for Mr. Herndl's remarks concerning the phrase "the carrying or use of weapons" he recalled that the Working Group had chosen that term with certain religious sects in mind such as the Mennonites, who forbade any contact with arms whatsoever, even in cases of self-defence.

27. While he did not object in principle to the deletion of the first sentence, he stressed the need for an introduction to the paragraph and suggested, by way of a solution, that the first two sentences might be combined in some appropriate way.

28. Mr. EL SHAFEI said that the discussion was straying from the main issue. He had no objection to Mr. Wennergren's suggestion that the Committee should attempt to broaden the meaning of conscientious objection. However, he saw no justification, when dealing with the very specific issue of performance of military service under article 18, for attempting to create a link with the issue of deprivation of life under article 6.

29. The CHAIRMAN, speaking as a member of the Committee, pointed out that paragraphs 9 to 11 had originally been placed in parentheses. The Committee would therefore fulfil its appointed task by concluding its consideration of the draft general comment with paragraph 8. In principle, the Committee should refrain from asking for information relating to other articles of the Covenant.

30. Mr. HERNDL said he favoured the retention of paragraph 11. He proposed two drafting changes: in the third sentence, the word "it" should be replaced by the words "such a right"; and, in the last sentence, the word "persons" should be replaced by "conscientious objectors", so as to make it clear that States were not being requested to provide information on persons exempted for reasons other than conscientious objection.

31. Mr. NDIAYE said that the Committee's general comments were not merely exercises in interpreting the Covenant, but were intended to improve State practice. He therefore favoured the retention of paragraphs 9, 10 and 11, as

a means of soliciting information from States that would further that aim. However, in paragraph 11 the Committee should confine itself to the specific issue of conscientious objection.

32. Mr. DIMITRIJEVIC, summarizing the discussion thus far, said that the Committee must first decide whether to retain the two introductory sentences. The general opinion seemed to be that some form of introduction was needed, in which case one possibility would be to compress the first two sentences into a single sentence. However, in his opinion, little would be gained by so doing. The first sentence was needed in order to explain the term "conscientious objection" and to state that it had been linked, by all those claiming that right vis-à-vis their Governments, to freedoms under article 18; while the second explained why it was legitimate for the Committee to consider States' response to the phenomenon. In his view, both sentences should be retained.

33. Mr. Herndl's concern regarding the wording of the second sentence could in his view be addressed simply by deleting the phrase "the carrying or use of weapons or". In the third sentence, Mr. Herndl's suggestion to replace the word "it" by the words "such a right" was helpful. As to the expression "lethal force", the Committee must bear in mind the rule that any interpretation departing from the strict grammatical sense of a norm must be restrictive. Use of broader terms such as "bearing or carrying of arms" or "military service" was thus unacceptable, and might have the additional effect of deterring States that did not currently recognize the right of conscientious objection from amending their practice. The essential feature of conscientious objection was objection to participation in any activity involving the infliction of death; and since the right of conscientious objection was formulated on the basis not of article 6, but of article 18, the present wording should in his view be retained.

34. As to the use of the word "differentiation" in the fourth sentence, the term had been intended to cover situations where claims to the right of conscientious objection based on religious belief had been treated favourably, whereas claims with a non-religious basis had been treated unfavourably. However, if it was felt that the term was insufficiently precise, it could be replaced by the word "discrimination". The Committee might also wish to consider adopting Mr. Sadi's suggestion concerning the division of the penultimate sentence. The concluding phrase of that sentence ("because they have failed to perform military service") could be deleted. However, the phrase had been intended to cover situations in which conscientious objectors were made to suffer in later life as a result of their failure to perform military service at some earlier date.

35. With regard to the final sentence, Mr. Wennergren's concerns could perhaps be met by amending the close of the sentence to read "... exempted from national service on the basis of their rights under article 18 and on the nature of alternative service".

36. Mrs. EVATT said that the text as now worded appeared to refer to a right to conscientious objection derived from article 18. Was the intention to state that a person could claim that right, and a violation of that right,

under article 18? She understood that some years previously the Committee had decided the exact opposite; in that case, it should perhaps indicate its awareness that it was now departing from a previous decision.

37. Mr. WENNERGREN said that in his proposal he had referred, not to article 6 as such, but to the terms used therein. The protection of life was the main concern of conscientious objectors; to talk of "lethal force" was simply to beat about the bush. Regarding the last sentence, his suggestion had been to refer to "conditions in respect of freedoms under article 18", so as to exclude exemptions on grounds such as physical disability. He welcomed Mr. Dimitrijevic's suggestion that the Committee should request information on exemptions from forms of national service other than military service, and favoured a reference to exemptions from national service "or other public duties", to cover cases such as discrimination against doctors and nurses who objected to participating in the performance of abortions or the implantation of contraceptive coils.

38. The CHAIRMAN said that Mrs. Evatt had raised a crucial point regarding the Committee's past practice. Was it to refer clearly to article 18 as the basis for a right of conscientious objection?

39. Mrs. EVATT said that the factor that might not have been considered previously by the Committee - although it had been taken into account by some States - in connection with claims of a right of conscientious objection was precisely the point made by Mr. Wennergren, namely, that participation in military service could involve a person in deprivation of life. Yet the right to life was protected by all international covenants. As State practice moved towards recognition of a right of conscientious objection, so the Committee could develop its own approach.

40. Mr. HERNDL said he thought that the Committee was losing its way. It was dealing, not with requirements to perform forced labour under article 8, but with compulsory military service. In the interests of securing a consensus, he proposed retaining the first two sentences (leaving open the question of whether to accept Mr. Francis' new formulation), with the deletion of the words "the carrying or use of weapons or". In the third sentence, the controversial expression "use lethal force" should be replaced by "perform military service" - a formulation already used in the second sentence. The fourth sentence should be divided by a semi-colon after the word "beliefs", and the phrase "because they have failed to perform military service" retained. The last sentence should confine itself to exemptions from military, rather than national, service, so as to avoid encroaching on the domain of article 8. The Committee should not enter into the more general question of public duties.

41. The CHAIRMAN said that a majority seemed to favour retaining the first two sentences, with or without some amendment. Various suggestions had been made for amending the third sentence. The fourth sentence would be divided by a semi-colon. The unresolved question was whether to retain the reference to "military service" in the last sentence, or to expand its scope further.

42. Mr. WENNERGREN, speaking on a point of order, said that the Committee should not adopt paragraph 11 in the absence of the necessary quorum.

43. Mr. NDIAYE said that the Committee habitually worked without a quorum when considering communications and general comments. In any case, nothing prevented it from continuing its discussion. He reiterated his view that the first sentence and the opening of the second sentence were redundant.

44. Mr. DIMITRIJEVIC said that it would not be unreasonable to adopt the general comment on a provisional basis pending its approval by a quorum of the members. The more general aspects of matters of conscience had already been covered in paragraph 8, which indicated that only justified restrictions might be applied. Repetition should be avoided. If for example a doctor had serious misgivings in following a particular procedure on grounds of conscience, his right to refuse could be restricted, if the Government saw fit, on one of the grounds listed in article 18 (3), i.e. public safety, order, health or morals. If Mr. Wennergren's suggestions were to be followed too closely, the Committee might be seen to be on the side of obscurantism. In the not too distant past any form of medical intervention had been considered to be contrary to God's will and even today similar views were held by Christian Scientists.

45. The crucial question to be addressed was whether the Committee wished to depart from its previous practice by saying that a right to conscientious objection could be derived from article 18. There were arguments on both sides. He believed that the Committee should adopt a middle course, insisting on a restrictive interpretation, in which case the term "military service" rather than "lethal force" would be too general. Some people objected to military service, for example, because they were averse to discipline, restrictions on personal liberty, etc. Conscientious objection was not an objection to military service as such but an objection to killing other human beings. Equating military service with depriving others of their life might be too much for the public, let alone military officers, to swallow. The term "lethal force" should therefore be retained. If the Committee agreed that such a thing as a right to refuse military service existed, a claim under article 18 should be accepted only to the extent that it involved the use of dangerous weapons which might entail loss of human life.

46. Mr. Ndiaye's proposal regarding the first and second sentences was acceptable, possibly subject to the insertion of the words "(conscientious objection)" after "performance of military service". The expression "lethal force" should be retained, since otherwise the comment would be too broad.

47. Mr. NDIAYE drew attention to the important point raised by Mrs. Evatt, namely that in the past the Committee had not recognized a right to conscientious objection under article 18.

48. Mrs. EVATT said that she had merely drawn attention to the views which the Committee had formerly expressed, without implying that it should continue to adhere to those views at the present time.

49. Mr. HERNDL said that he was in favour of retaining the first sentence in paragraph 11, possibly with the deletion of the words "The Committee is aware that". The fact of the matter was that a growing number of persons were claiming that right and a growing number of States were allowing its exercise.

50. Mr. NDIAYE accepted Mr. Herndl's proposal.

51. Mr. DIMITRIJEVIC said that the crucial element was that the Committee was making a formal statement of its views and it would be incorrect to say that it recognized all forms of objection as legitimate. In the third sentence there was simply no better expression than "to use lethal force".

52. Mr. NDIAYE suggested that, in the third sentence, the words "the Committee believes" should be replaced by "a number of States believe".

53. Mr. DIMITRIJEVIC said that such an amendment was not such a minor change as it might appear. If the view expressed was to be attributed to States rather than to the Committee, there was no reason to include it. If no agreement could be reached, the sentence should be put in square brackets and left to the full Committee to decide.

54. Mr. NDIAYE said he would not insist on his proposal.

Paragraph 7 (continued)

55. Following a reminder from Mr. Wennergren that a final decision remained to be taken regarding the first sentence of paragraph 7, Mrs. EVATT, supported by Mr. DIMITRIJEVIC, suggested that the sentence could be considered as superfluous to the basic concern expressed in the paragraph and might be deleted.

56. It was so agreed.

WORLD CONFERENCE ON HUMAN RIGHTS

57. The CHAIRMAN said that, in accordance with the annotated agenda (CCPR/C/86), the Committee was to "consider the outcome of the World Conference on Human Rights, in the light of information and documentation to be provided during the session". The documentation before members included: the descriptive draft agenda prepared for the meeting, held within the framework of the Conference, of the persons chairing the United Nations human rights treaty bodies and those chairing (or holding an equivalent position on) each of the principal, regional and other human rights organizations, with the aim of preparing recommendations for enhancing the effectiveness of United Nations activities and mechanisms (A/CONF.157/TBB/1); a paper submitted to the Conference by the Human Rights Committee on its work under article 40 of the International Covenant on Civil and Political Rights (A/CONF.157/TBB/2); a further contribution from the Committee concerning follow-up on views adopted under the Optional Protocol to the Covenant, prepared for the meeting of chairpersons (A/CONF.157/TBB/3); the "Vienna Statement" adopted by that meeting (A/CONF.157/TBB/4); and the Vienna Declaration and Programme of Action adopted by the Conference on 25 June 1993.

58. Various members of the Human Rights Committee had contributed to submissions which he, as Chairman, had endeavoured to set before the Conference on its behalf. He had been the sole representative of the Committee at the meeting of the chairpersons of international and regional human rights treaty-based bodies (attended also by representatives of ILO

and UNESCO); but a number of members of the Committee had been present at the Conference in one capacity or another, and he would invite them to provide any additional information they saw fit.

59. The chairpersons' meeting had produced a broad exchange of views and a series of recommendations to the Conference, which would be found at the end of document A/CONF.157/TBB/4. As could be inferred from paragraph 6 of that document, he had been able - notably with the assistance of Mr. Pocar, present at the Conference as a member of his country's delegation - to raise inter alia and on behalf of the Committee, the issue of timely reporting. He had also stressed at the meeting the importance of effective follow-up action concerning individual communications, although it must be pointed out that the Committee's practice in the matter was not identical with that adopted by all the treaty-based bodies, and that the proposal put forward on the Committee's behalf had not been endorsed by the meeting as a whole for recommendation. There was, however, mention in paragraph 12 of the document of the desirability of extending the existing system of individual complaints to make it applicable to a broader range of human rights; and that concern was reflected in one of the meeting's formal recommendations. Paragraph 11 of the document reflected the Committee's preoccupation with the important issue of a follow-up procedure to monitor action taken by States in response to views, opinions, decisions or judgements concerning their reports, and its advocacy of on-the-spot visits as being of great potential value in that connection.

60. Turning from the subject of the chairpersons' meeting to the Conference itself, he first spoke of its somewhat inauspicious beginnings. He himself had only been present for the first week, but by the time of his departure prospects of accommodation or reconciliation had been emerging; and it had finally proved possible to adopt the Vienna Declaration and Programme of Action on 25 June 1993. Preambular paragraphs 6, 8 and 9 of the Declaration would be of special interest to members of the Committee. He also drew particular attention to the important reference to the question of the establishment, as a matter of priority, of a United Nations High Commissioner for Human Rights and further noted that the issue of setting up an International Court for Human Rights had been referred to the International Law Commission, which was currently considering the question of an international criminal court to deal with crimes against humanity.

61. He invited other members of the Committee who had been present at the Conference to convey additional information or impressions.

62. Mr. EL SHAFEI, noting that he had attended the Conference as a member of the Egyptian delegation, welcomed the Chairman's introductory account of the proceedings there. For his part, he could speak briefly of the work of the Drafting Committee, which, under the wise and efficient leadership of the Brazilian Ambassador, had been able to overcome what at the outset had looked like insurmountable difficulties of procedure, substance and time, and had eliminated an extremely large number of square brackets from the draft submitted by the Preparatory Committee, to produce the Declaration and Plan of Action that had been adopted.

63. Many controversies had been resolved through serious and intensive negotiations between the representatives of different countries, systems,

groups or interests; he described in some detail how the Drafting Committee had arrived at part II of the final document, singling out some of the most contentious of the issues resolved. They included: international cooperation for the development and protection of human rights and fundamental freedoms, where there had been debate on the notion of "legitimate concern" and on the subject of possible intervention as a consequence of such concern; the right to self-determination, which had given rise to an intense discussion of the rights of peoples under alien domination or foreign occupation to realize that right and of the interpretation to be given to the concept of internal self-determination; the universality, indivisibility and interdependence of human rights and fundamental freedoms, and the specificities of certain of those rights and freedoms in different countries, groups of countries or regions (a matter which had also been addressed in statements to the plenary); the linkage between democracy, development and respect for human rights (addressed, too, in plenary); the right to development as an inalienable right and the role of the international community, particularly the developed countries, in assisting the developing countries, notably the least developed among them and with special reference to Africa, in promoting national development programmes and strengthening democracy and human rights; cooperation between Governments and non-governmental organizations (the subject of a most important statement in the final document); the enjoyment of human rights and freedoms without distinction of any kind; and the threat to human rights that was posed by terrorism.

64. Other issues, including the rights of women and the girl-child, of minorities, of indigenous peoples, of the elderly and of other vulnerable groups, had given rise to less debate, and the drafting of the final document in that connection had not been so difficult. The right to asylum had been discussed at some considerable length, and a more or less satisfactory agreement had been reached on that subject.

65. Those were just some of the important matters addressed by the Conference which, given its scope and extremely large attendance, could be deemed to have been a real success; that was in no small measure due to its careful preparation and to all the efforts of the host country and the authorities of the city of Vienna. It now remained to transform all the recommendations agreed there into realities.

66. The CHAIRMAN said he hoped that there would be time, later in the session, for other members of the Committee to share with their colleagues their impressions of the World Conference on Human Rights.

The meeting rose at 6.05 p.m.